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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/660,188	09/11/2003	David E. Mayhew	6257-14502	5820

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MEYERTONS, HOOD, KIVLIN, KOWERT & GOETZEL, P.C.

P.O. BOX 398

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EXAMINER

FOUD, HICHAM B

ART UNIT

PAPER NUMBER

2467

NOTIFICATION DATE

DELIVERY MODE

11/19/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patent\_docketing@intprop.com

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### Office Action Summary

**Application No.**

10/660,188

**Applicant(s)**

MAYHEW ET AL

**Examiner**

HICHAM B. FOUAD

**Art Unit**

2467

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 August 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,4 and 13-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4 and 13-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/5508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

### ***Response to Amendment***

1. The amendment filed on 08-14-2009 has been entered and considered.  
  
Claims 1, 2, 4, 13, 15, 17-25 and 27-28 are pending in this application.  
  
Claims 3, 5-12, 14, 16 and 26 are canceled.  
  
Claims 1, 2, 4, 13, 15, 17-25 and 27-28 are rejected as discussed below.

### ***Double Patenting***

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thornton*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 2, 4, 13, 15, 17-25 and 27-28 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over the amended claims 4-5, 14-16 and 20-27 of U.S. Co-pending application 10/945,633. Although the conflicting claims are not identical, they are not patentably distinct from each other because:

Claim 14 of the instant application merely changes the scope of the claim 26 of the Co-pending application 10/945,633 by changing the step of receiving data packets, of claim 26 of the Co-pending application, to means for receiving a packet. Thus, it would have been obvious to the one skill in the art at the time of the invention to know that the claimed subject matter is the same regardless of the terminology used.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1, 2, 4, 13, 15, 17-25 and 27-28 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted (bolded) elements are:

The claimed switch is **required to support path routing and only to forward the packet according to the path that is contained in the packet header** (see [0018]), the received/transmitted packets are **a path-routed packets** (see [0026] line 1) and the selection of the output port depends also on **the bit count which determines the backward or forward path** and not only turn value (see [0019] and [0024]) and the output port is specified as **"An output port number = ([input\_port\_number+turn\_value+1] modulo [N.sup.2+1])** (see [0020]). The above recited elements are essential and critical because the claimed switch routes the packets without the use of routing table and the destination address which are a must in routing regular packets (see the claims of co-pending 10/945,633). Therefore, the

claimed switch cannot function as claimed unless it supports path routing and only to forward the packet according to the path that is contained in the packet header, the packets are a path-routed packets and the transmission of the path-routed packets depend also on the bit count and the output port is specified as "An output port number =  $([\text{input\_port\_number} + \text{turn\_value} + 1] \text{ modulo } [\text{N.sup.2} + 1])$ ).

***Response to Arguments***

5. Applicant's arguments filed have been fully considered but they are not persuasive.

The double patenting rejection is maintained since the applicant failed to overcome the rejection.

In response to applicant's argument in regard of 112, 2<sup>nd</sup>, omission of steps, the examiner respectfully disagrees and disappointed because on the interview made on 07/28/2009 and wherein the applicant agreed on amending ALL the independent claims to comply with the 112 rejections. However, the amendment to the claims does not reflect that. Moreover, it is clear that the omitted steps and evidenced by the claims of the co-pending application (10/945,633) are: The claimed switch is **required to support path routing and only to forward the packet according to the path that is contained in the packet header** (see [0018]), the received/transmitted packets are **a path-routed packets** (see [0026] line 1) and the selection of the output port depends also on **the bit count which determines the backward or forward path** and not only turn value (see [0019] and [0024]) and the output port is specified as **"An output port number =  $([\text{input\_port\_number} + \text{turn\_value} + 1] \text{ modulo } [\text{N.sup.2} + 1])$**  (see [0020]).

The above recited elements are essential and critical because the claimed switch routes the packets without the use of routing table and the destination address which are a must in routing regular packets (see the claims of co-pending 10/945,633). Therefore, the claimed switch cannot function as claimed unless it supports path routing and only to forward the packet according to the path that is contained in the packet header, the packets are a path-routed packets and the transmission of the path-routed packets depend also on the bit count and the output port is specified as "An output port number =  $((\text{input\_port\_number} + \text{turn\_value} + 1) \bmod N.\text{sup.}2 + 1)$ ".

Therefore, the rejection is maintained and all the independent claims must reflect the changes since all claim the same subject matter.

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HICHAM B. FOUUD whose telephone number is (571)270-1463. The examiner can normally be reached on Monday - Friday 10-6 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pankaj, Kumar can be reached on 571-272-3011. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Hicham B Foud/  
Examiner, Art Unit 2467  
11/11/2009

/Hong Cho/  
Primary Examiner, Art Unit 2467